

**JAN - 9 2009**

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**UNITED STATES DISTRICT COURT**

**WESTERN DISTRICT OF LOUISIANA**

**LAKE CHARLES DIVISION**

**BRENITA F. PULLAM**

**: DOCKET NO. 2:06-cv-1771**

**VS.**

**: JUDGE MINALDI**

**U.S. COMMISSIONER, SOCIAL  
SECURITY ADMINISTRATION**

**: MAGISTRATE JUDGE KAY**

**REPORT AND RECOMMENDATION**

Before the court is Plaintiff's Motion for Fees Under the Equal Access to Justice Act, 28 U.S.C. § 2412 (EAJA). [Doc. 14]. This matter has been referred to the undersigned magistrate judge for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

By judgment dated August 26, 2008, this matter was reversed and remanded pursuant to the fourth sentence of 42 U.S.C. § 405(g). [Doc 13]. Thus, Plaintiff qualifies as a prevailing party. Plaintiff's attorney seeks fees of \$5,156.25 (41.25 hours at \$125.00 per hour). Counsel has submitted appropriate documentation of attorney spent on this case. Doc. 14, at 4-5. Further, the Commissioner has filed notice that he does not object to the amount requested by counsel.

The hourly rate for EAJA attorney fees is set forth in 28 U.S.C. § 2412(d)(2)(A), which states that reasonable attorneys fees:

shall be based upon prevailing market rates for the kind and quality of the services furnished ...,except that ... attorneys fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

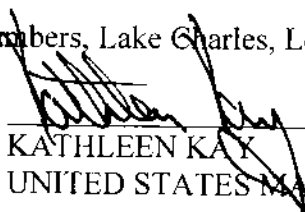
Here, counsel avers that he billed attorney's fees at \$125.00 per hour. As this fee does not exceed the statutorily prescribed rate, and the government does not oppose any aspect of counsel's request, this court finds the motion well taken.

Accordingly, it is RECOMMENDED that Plaintiff's application for EAJA fees be granted and that fees be fixed at \$5156.25.

Under the provisions of 28 U.S.C. §636(b)(1)(C), the parties have ten (10) business days from receipt of this Report and Recommendation to file any objections with the Clerk of Court. Timely objections will be considered by the district judge prior to a final ruling.

**FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY FROM ATTACKING ON APPEAL, EXCEPT UPON GROUNDS OF PLAIN ERROR, THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT COURT.**

THUS DONE AND SIGNED in Chambers, Lake Charles, Louisiana, January 9, 2009

  
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KATHLEEN KAY  
UNITED STATES MAGISTRATE JUDGE